

## RBS and RUS, USDA

## § 4290.660

Concern to give you and/or the Secretary's examiners access to its books and records for such purpose.

### REPORTING REQUIREMENTS FOR RBICs

#### **§ 4290.630 Requirement for RBICs to file financial statements and supplementary information with the Secretary (SBA Form 468).**

(a) *Annual filing of SBA Form 468.* For each fiscal year, you must submit financial statements and supplementary information prepared on SBA Form 468. You must file Form 468 on or before the last day of the third month following the end of your fiscal year, except for the information required under paragraphs (e) and (f) of this section, which must be filed on or before the last day of the fifth month following the end of your fiscal year.

(1) *Audit of Form 468.* An independent public accountant acceptable to the Secretary must audit the annual Form 468.

(2) *Insurance requirement for public accountant.* Unless the Secretary approves otherwise, your independent public accountant must carry at least \$1,000,000 of Errors and Omissions insurance, or be self-insured and have a net worth of at least \$1,000,000.

(b) *Interim filings of Form 468.* When requested by the Secretary, you must file interim reports on Form 468. The Secretary may require you to file the entire form or only certain statements and schedules. You must file such reports on or before the last day of the month following the end of the reporting period. When you submit a request for a draw under a Leverage commitment, you must also comply with any applicable filing requirements set forth in § 4290.1220.

(c) *Standards for preparation of Form 468.* You must prepare SBA Form 468 in accordance with SBA's Accounting Standards and Financial Reporting Requirements for SBICs, which you may obtain from SBA or at <http://www.sba.gov/INV/standards.pdf>.

(d) *Where to file Form 468.* Submit all filings of Form 468 to the Investment Division of SBA.

(e) *Reporting of economic development impact information for each Financing on Form 468.* Your annual filing of SBA Form 468 must include an assessment

of the economic development impact of each Financing. This assessment must specify the fulltime equivalent jobs created, the impact of the Financing on the revenues and profits of the business and on taxes paid by the business and its employees, and a listing of the number and percentage of employees who reside in Rural Areas.

(f) *Reporting of economic development information for certain Financings.* For each Rural Business Concern Investment and each Smaller Enterprise Investment, your Form 468 must include an assessment of each such Financing with respect to:

(1) The economic development benefits achieved as a result of the Financing;

(2) How and to what extent such benefits fulfilled the goals of your comprehensive business plan and Participation Agreement; and

(3) Whether you consider the Financing or the results of the Financing to have fulfilled the objectives of the RBIC program.

#### **§ 4290.640 Requirement to file portfolio financing reports with the Secretary (SBA Form 1031).**

For each Financing you make (excluding guarantees), you must submit a Portfolio Financing Report on SBA Form 1031 within 30 days of the closing date.

#### **§ 4290.650 Requirement to report portfolio valuations to the Secretary**

You must determine the value of your Loans and Investments in accordance with § 4290.503. You must report such valuations to the Secretary within 90 days of the end of the fiscal year in the case of annual valuations, and within 30 days following the close of other reporting periods. You must report material adverse changes in valuations at least quarterly, within 30 days following the close of the quarter.

#### **§ 4290.660 Other items required to be filed by RBIC with the Secretary.**

(a) *Reports to owners.* You must give the Secretary a copy of any report you furnish to your investors, including

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any prospectus, letter, or other publication concerning your financial operations or those of any Portfolio Concern.

(b) *Documents filed with SEC.* You must give the Secretary a copy of any report, application or document you file with the Securities and Exchange Commission.

(c) *Litigation reports.* When you become a party to litigation or other proceedings, you must give the Secretary a report within 30 days that describes the proceedings and identifies the other parties involved and your relationship to them.

(1) The proceedings covered by this paragraph (c) include any action by you, or by your security holder(s) in a personal or derivative capacity, against an officer, director, Investment Adviser/Manager or other Associate of yours for alleged breach of official duty.

(2) The Secretary may require you to submit copies of the pleadings and other documents he or she may specify.

(3) Where proceedings have been terminated by settlement or final judgment, you must promptly advise the Secretary of the terms.

(4) This paragraph (c) does not apply to collection actions or proceedings to enforce your ordinary creditors' rights.

(d) *Notification of criminal charges.* If any officer, director, general partner, or managing member of the RBIC, or any other person who was required by the Secretary to complete a personal history statement, is charged with or convicted of any criminal offense other than a misdemeanor involving a minor motor vehicle violation, you must report the incident to the Secretary within 5 calendar days. Such report must fully describe the facts that pertain to the incident.

(e) *Reports concerning Operational Assistance grant funds.* You must comply with all reporting requirements set forth in Circular A-110 of the Office of Management and Budget and any grant award document executed between you and the Secretary.

(f) *Other reports.* You must file any other reports the Secretary may require in writing.

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### § 4290.680 Reporting changes in RBIC not subject to prior approval.

(a) *Changes to be reported for post-approval.* This section applies to any changes in your Articles, ownership, capitalization, management, operating area, or investment policies that do not require the Secretary's prior approval. You must report such changes to the Secretary within 30 days after the change, for post approval.

(b) *Approval by the Secretary.* You may consider any change submitted under this § 4290.680 to be approved unless the Secretary notifies you to the contrary within 90 days after receiving it. Approval is contingent upon your full disclosure of all relevant facts and is subject to any conditions the Secretary may prescribe.

### EXAMINATIONS OF RBICS BY THE SECRETARY FOR REGULATORY COMPLIANCE

#### § 4290.690 Examinations.

All RBICs must submit to annual examinations by or at the direction of the Secretary for the purpose of evaluating regulatory compliance.

#### § 4290.691 Responsibilities of RBIC during examination.

You must make all books, records and other pertinent documents and materials available for the examination, including any information required by the examiner under § 4290.620(c). In addition, the agreement between you and the independent public accountant performing your audit must provide that any information in the accountant's working papers be made available to the examiners upon request.

#### § 4290.692 Examination fees.

(a) *General.* The Secretary will assess fees for examinations in accordance with this § 4290.692. Unless the Secretary determines otherwise on a case by case basis, he or she will not assess fees for special examinations to obtain specific information.

(b) *Base fee.* A base fee of \$9,200 + 0.015 percent of your assets will be assessed, subject to adjustment in accordance with paragraph (c) of this section.